

EXHIBIT A



OCEAN TOMO
INTELLECTUAL CAPITAL EQUITY

JAMES HAYDEN

v.

2K GAMES, INC. AND TAKE-TWO INTERACTIVE SOFTWARE, INC.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

Civil Action No. 1:17-cv-02635-CAB

SUPPLEMENTAL EXPERT REPORT OF JAMES E. MALACKOWSKI

August 16, 2021

**ATTORNEYS' EYES ONLY
SUBJECT TO PROTECTIVE ORDER**

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1. ASSIGNMENT

This report is designated as containing Attorneys' Eyes Only information under the Protective Order issued in this matter, as specified in the footer on each page.¹ This report is to be used only for the purpose of this litigation. No part of this report may be published or used for any other purpose without written consent.

Ocean Tomo, LLC ("Ocean Tomo") was retained by counsel for Take-Two Interactive Software, Inc. ("Take-Two Interactive") and Take-Two Interactive's wholly-owned subsidiary, 2K Games, Inc. ("2K Games") (collectively, "Take-Two"), in August 2019 to perform analyses in connection with this matter and was asked to analyze the form and amount of the appropriate compensation, if any, related to the allegations made by James Hayden of copyright infringement by Take-Two. On May 27, 2021, I issued an expert report with appendices, including schedules, in this matter² (the "Malackowski Report") expressing my opinions regarding the form and compensations, if any, due to Mr. Hayden if Take-Two is found liable with regard to any of Mr. Hayden's allegations of copyright infringement in this matter. My opinions as expressed in the Malackowski Report, including both the text and the schedules, remain my opinions as of the date of this supplemental report.

On July 1, 2021, I issued a rebuttal report (the "Malackowski Rebuttal Report")³ in response to the Expert Report of Michal A. Malkiewicz, dated May 27, 2021,⁴ which expressed opinions regarding damages on behalf of Mr. Hayden, and confirmed that my opinions in the Malackowski Report were not changed by the analysis and opinions of Mr. Malkiewicz.

On July 1, 2021, experts for Mr. Hayden issued rebuttal reports, including the Rebuttal Expert Report of Michal A. Malkiewicz,⁵ the Rebuttal Expert Report of Dr. Justin Lenzo⁶ and the Rebuttal Expert Report of Dr. H. Tolga Bilgicer.⁷ I have been asked to supplement my opinions to address new issues raised in the rebuttal reports of Mr. Malkiewicz and Dr. Lenzo.

My qualifications, experience, compensation and curriculum vitae were provided in the Malackowski Report and have not been duplicated in this supplemental report. A listing of documents considered by Ocean Tomo in connection with this litigation are presented in Appendix B – Supplemental attached to this supplemental report. In addition to these documents, I interviewed Barry Charleton, 2K Games Senior Director of Growth Operations and former Senior Director of

¹ Stipulated Protective Order, August 10, 2019.

² Expert Report of James E. Malackowski, May 27, 2021.

³ Rebuttal Expert Report of James E. Malackowski, July 1, 2021.

⁴ Expert Report of Michal A. Malkiewicz, May 27, 2021.

⁵ Rebuttal Expert Report of Michal A. Malkiewicz, July 1, 2021.

⁶ Rebuttal Expert Report of Dr. Justin Lenzo, July 1, 2021.

⁷ Rebuttal Expert Report of Dr. H. Tolga Bilgicer, July 1, 2021.

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Finance Operations and Angelica Flores, 2K Games Senior Director of Accounting, regarding Take-Two's financial data.

For purposes of this report, I have assumed that Take-Two will be found liable for the copyright infringement claims asserted by Mr. Hayden. This assumption is made exclusively for the purpose of determining economic damages and in no way represents or relates to any form of legal conclusion. As stated in the Malackowski Report, no part of Ocean Tomo's compensation depends on the outcome of this litigation.

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